

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)	
Implementation of Section 621(a)(1) of)	
the Cable Communications Policy Act of 1984)	MB Docket No. 05-
311		
as amended by the Cable Television Consumer)	
Protection and Competition Act of 1992)	

COMMENTS OF Toppenish, Granger, Wapato, and Zillah

These Comments are filed by the City of Toppenish, on behalf of the cities of Wapato, Granger, and Zillah, an inter local franchise agreement, in support of the comments filed by the National Association of Telecommunications Officers and Advisors ("NATOA"). Like NATOA, Toppenish believes that local governments can issue an appropriate local franchise for new entrants into the video services field on a timely basis, just as they have for established cable services providers. In support of this belief, we wish to inform the Commission about the facts of video franchising in our community.

In our community a cable "franchise" is termed a franchise. The Federal Cable Act refers to this as a "franchise" so we will use that term in these comments. Also, many communities have a cable ordinance which operates in conjunction with the franchise agreement, the terms of which are often negotiated with the cable company in conjunction with the franchise agreement. These documents collectively referred to as the "franchise" below.

Cable Franchising in Our Community

Community Information

Toppenish is a city with a population of 9,000. Zillah is a city with a population of 2,198, Granger is a city with a population of 2,530 and Wapato is a city with a population of 4,582. Population total for the four cities is 18,310. Our franchised cable provider(s) is/are Charter Digital Cable. Our community has negotiated a cable franchise since 1980.

Our Current Franchise

Our current franchise began on September 1, 1980 and expires on September 1, 2013. Under the statutory timeline laid out in the Federal Cable Act, the cable operator has a 6-month window beginning 36 months before the expiration of the franchise in which to request a renewal under the Federal Act. At this time we are not currently negotiating a franchise renewal with the incumbent provider.

Our franchise requires the cable operator to pay a franchise fee to the city, in the amount of 5% of the cable operator's revenues. The revenues for franchise fee purposes are calculated based on the gross revenues of the operator, in accordance with the Federal Cable Act.

We require the cable operator to provide the following capacity for public, educational, and/or governmental ("PEG") access channels on the cable system. We currently have one channel (or capacity) devoted to public access and educational access; and one channel (or capacity) devoted to government access.

Our franchise requires that our PEG channels be supported in the following ways by the cable operator: A one time capital grant was provided for the purchase of equipment and building maintenance for operation of the PEG channels for use over the fifteen year franchise agreement.

Our franchise does not contain institutional network ("I-Net") requirements.

Our franchise does not contain requirements regarding emergency alerts.

Our franchise contains the following customer service obligations, by which we are able to help ensure that the cable operator is treating our residents in accordance with federal standards and the terms it agreed to in its franchise. Our Cable Regulation Board representing the cities of Toppenish, Wapato, Granger, and Zillah monitors customer service complaints and rate increase requests. Over the life of our current franchise we do not have one example of a customer service complaint that has not been resolved between the cable operator and the local board. We require a local office to be open at least three days a week for bill payment, complaints, etc.

Our franchise contained the following reasonable build schedule for the cable operator: The cities required an upgrade of 10 live drop capabilities, two for each city, one for the PEG studio; and upgrade to digital transmission as per the cable rewrite act. The upgrades and live drop requirement was met by Charter Digital Cable in 2004. We also require the cable company to meet all FCC technical requirements.

Our franchise requires that the cable operator currently provide service to the following areas of Toppenish, Wapato, Granger, and Zillah franchise boundaries and any extended areas caused by growth or expansion of the cable upgrade.

Our franchise does not contain a "most-favored-nations" provision.

Our franchise contains the following insurance and bonding requirements: General requirements to ensure the cable company has protection for claims for injuries to Persons or damages to property which in any way relate to, arise from, or are connected with this franchise or involved the cable company, its agents, representatives, contractors, subcontractors and their employees. Limited Insurance for Commercial General Liability, Automobile Liability, and Employer Liability.

The cable franchise grants the cable operator access to the public rights of way and compatible easements for the purpose of providing cable television service. Apart from the franchise, the cable provider is not required to obtain a permit from the appropriate municipal office as well before it may access the public rights of way.

The franchise agreement provides for the following enforcement mechanisms by which we are able to ensure that the cable operator is abiding by its agreement: The cities reserve the right, after notice is provided, to forfeit and terminate the franchise and all rights and privileges of the company in the event of a substantial breach of its terms and conditions; such as fraud or deceit upon any City or subscriber, failure to restore Cable Service after 96 consecutive hours of interrupted service, except when approval of such interruption is obtained from the Office of Cable Communications.

The Franchising Process

Under the law, a cable franchise functions as a contract between the local government (operating as the local franchising authority) and the cable operator. Like other contracts, its terms are negotiated. Under the Federal Cable Act it is the statutory obligation of the local government to determine the community's cable-related needs and interests and to ensure that these are addressed in the franchising process – to the extent that is economically feasible. However derived (whether requested by the local government or offered by the cable operator), once the franchise is approved by both parties the provisions in the franchise agreement function as contractual obligations upon both parties.

Our current franchise provides that changes in law which affect the rights or responsibilities of either party under this franchise agreement will be treated as follows: In addition to the inherent powers of the cities to regulate and control this

franchise, and those powers expressly reserved by the cities, or agreed to and provided for herein, the right and power is hereby reserved by the cities to promulgate such additional rules and regulations as it shall find necessary in the exercise of its lawful powers and in furtherance of the terms and conditions of this franchise. The cities may also adopt such regulations at the request of the cable company upon application.

Competitive Cable Systems

Our community has never been approached by a competitive provider to provide service.

Conclusions

The local cable franchising process functions well in Toppenish. As the above information indicates, we are experienced at working with our cable provider to both see that the needs of the local community are met and to ensure that the practical business needs of the cable provider are taken into account.

Local cable franchising ensures that local cable operators are allowed access to the rights of way in a fair and evenhanded manner, that other users of the rights of way are not unduly inconvenienced, and that uses of the rights of way, including maintenance and upgrade of facilities, are undertaken in a manner which is in accordance with local requirements. Local cable franchising also ensures that our local community's specific needs are met and that local customers are protected.

Local franchises thus provide a means for local government to appropriately oversee the operations of cable service providers in the public interest, and to ensure compliance with applicable laws. There is no need to create a new Federal bureaucracy in Washington to handle matters of specifically local interest.

Finally, local franchises allow each community, including ours; to have a voice in how local cable systems will be implemented and what features (such as PEG access, institutional networks or local emergency alerts, etc.) will be available to meet local needs. These factors are equally present for new entrants as for existing users.

The Cities of Toppenish, Granger, Wapato, and Zillah, therefore respectfully request that the Commission do nothing to interfere with local government authority over franchising or to otherwise impair the operation of the local franchising process as set forth under existing Federal law with regard to either existing cable service providers or new entrants.

Respectfully submitted,

Toppenish, Washington

By: Scott Staples,
MVTV Cable Communications

Officer

Manager, City of Toppenish
21 West First Avenue
Toppenish, WA 98948

cc Jon Norton and Andrew Long, FCC
NATO